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7 UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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10 JAMES RANDLE,

11 Plaintiff,

12 v.

13 PATRICK COVELLO, Warden, et al.,

14 Defendants.  
15

No. 2:19-cv-2615-EFB P

ORDER

16 Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C.  
17 § 1983, seeks leave to proceed in forma pauperis. ECF No. 2.

18 Application to Proceed In Forma Pauperis

19 Plaintiff's applications makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).  
20 Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect  
21 and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.  
22 § 1915(b)(1) and (2).

23 Screening Requirements

24 The court is required to screen complaints brought by prisoners seeking relief against a  
25 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
26 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
27 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
28 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

1 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
2 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th  
3 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
4 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,  
5 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*  
6 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490  
7 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
8 has an arguable legal and factual basis. *Id.*

9 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
10 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
11 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
12 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).  
13 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
14 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
15 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations  
16 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
17 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)  
18 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1216 (3d  
19 ed. 2004)).

20 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
21 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
22 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content  
23 that allows the court to draw the reasonable inference that the defendant is liable for the  
24 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint  
25 under this standard, the court must accept as true the allegations of the complaint in question,  
26 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading  
27 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*  
28 *McKeithen*, 395 U.S. 411, 421 (1969).

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First, plaintiff fails to state an equal protection claim because there is no specific allegation that defendant Molle (or any other individual) fired, refused to rehire, or placed plaintiff in administrative segregation because of plaintiff's race. *See Thornton v. City of St. Helens*, 425 F.3d 1158, 1166-67 (9th Cir. 2005).

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Plaintiff's complaint is dismissed with leave to amend. If plaintiff chooses to file an amended complaint it should observe the following:

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1 in sufficient detail, how each defendant personally violated or participated in the violation of his  
2 rights. The court will not infer the existence of allegations that have not been explicitly set forth  
3 in the amended complaint.

4 The amended complaint must contain a caption including the names of all defendants.  
5 Fed. R. Civ. P. 10(a).

6 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See  
7 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

8 Any amended complaint must be written or typed so that it so that it is complete in itself  
9 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
10 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
11 earlier filed complaint no longer serves any function in the case. See *Forsyth v. Humana*, 114  
12 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
13 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
14 1967)).

15 Finally, the court notes that any amended complaint should be as concise as possible in  
16 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of  
17 procedural or factual background which has no bearing on his legal claims.

#### 18 Conclusion

19 Accordingly, IT IS HEREBY ORDERED that

- 20 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 21 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected  
22 in accordance with the notice to the California Department of Corrections and  
23 Rehabilitation filed concurrently herewith;
- 24 3. Plaintiff’s complaint is dismissed with leave to amend within 30 days from the  
25 date of service of this order; and

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1                   4. Failure to comply with this order may result in dismissal of this action.

2 DATED: April 8, 2020.

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4 EDMUND F. BRENNAN

5 UNITED STATES MAGISTRATE JUDGE

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